

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEONARDO DEBESS WELLS, SR.,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Defendant.

Case No. 2:13-cv-00529-JCM-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

This matter is before the court on Plaintiff Leonardo Debess Wells, Sr.'s Motion for Entry of Clerk's Default (Dkt. #15) and Motion for Default Judgment (Dkt. #16), both filed August 30, 2013. The court has considered the Motions.

BACKGROUND

Plaintiff is proceeding in this action pro se and in forma pauperis. On June 4, 2013, the court entered an Order (Dkt. #4) screening Plaintiff's Complaint (Dkt. #7) pursuant to 28 U.S.C. § 1915 and directing the Clerk of Court to serve the Complaint. The Clerk issued Summons (Dkt. #8) and mailed them with the Complaint to the Office of General Counsel and the Attorney General by certified mail as directed in the Screening Order. *See* Certified Mail Receipts (Dkt. #7). The docket reflects that service is complete on the Office of General Counsel and the U.S. Attorney General. *See* Certified Mail Return Receipt (Dkt. #9); Summons Returned Executed (Dkt. ##10, 11).

Additionally, the Screening Order directed the Clerk of Court to issue summons to the United States Attorney for the District of Nevada and deliver the summons to the U.S. Marshal for service. The Clerk issued Summons (Dkt. #8), but the docket did not reflect that it was delivered with the Complaint to the U.S. Marshal for service or that the U.S. Marshal has effected service of process on the United States Attorney. Therefore, the court entered an Order (Dkt. #12) on August 30, 2013,

directing the Clerk of Court to reissue summons to the United States Attorney for the District of Nevada and deliver it to the U.S. Marshal for service. The Clerk complied, and the U.S. Marshal served the United States Attorney for the District of Nevada on August 20, 2013. *See* Summons (Dkt. #13); Summons Returned Executed (Dkt. #14).

DISCUSSION

Plaintiff requests the Clerk of Court enter default against Defendant, and the court enter default judgment against Defendant because she was served on June 28, 2013, and more than sixty days have elapsed without a responsive pleading filed. Rule 4(i) of the Federal Rules of Civil Procedure provides that when serving the United States, a complaint and summons must be served on the United States Attorney General, the specific agency named in the suit, and the United States Attorney's Office for the district in which the action is pending. Because Plaintiff is proceeding in forma pauperis, the U.S. Marshal must serve the complaint and summons. *See* 28 U.S.C. § 1915(d). Here, the U.S. Marshal did not serve the United States Attorney for the District of Nevada until August 20, 2013. Thus, Defendant's Answer is not due until October 21, 2013. *See* Fed. R. Civ. P. 12(a) (government's responsive pleading due sixty days after service); Fed. R. Civ. P. 6(a) (if last day of any period of time prescribed under Rules is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day which is not one of the aforementioned days).

Accordingly,

IT IS RECOMMENDED:

1. Plaintiff's Motion for Clerk's Entry of Default (Dkt. #15) be DENIED.
2. Plaintiff's Motion for Default Judgment (Dkt. #16) be DENIED.

Dated this 16th day of September, 2013.


PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

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NOTICE

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and recommendations of a magistrate judge shall file and serve *specific written objections* together with points and authorities in support of those objections, within fourteen days of the date of service of the findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject to the page limitations found in LR 7-4.